

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200944

DATE: February 5, 1981

MATTER OF: Alpha Carpet & Upholstery Cleaners, Inc.

DIGEST:

1. Agency omission of bidder from bidders' mailing list and inability of bidder to find notice of solicitation in Commerce Business Daily because job was allegedly misclassified does not require resolicitation where actions are not shown to be deliberate, significant effort is made to obtain competition, and award is made at reasonable price.
2. Section 223(a) of Public Law 95-507, which directs that procuring agencies provide small businesses adequate bidding information, agency contacts, and citations to pertinent laws and regulations, does not require cancellation of procurement where agency inadvertently failed to provide information.

Alpha Carpet & Upholstery Cleaners, Inc. (Alpha), protests the award of a contract under solicitation No. GSD-9DPR-0014 issued by the General Services Administration (GSA) for rug and carpet repair, installation and cleaning services at Federal installations in Arizona, California, Hawaii and Nevada. Alpha, the incumbent contractor for these services, contends GSA should cancel and readvertise the procurement because Alpha did not receive a copy of the solicitation, thus preventing Alpha from submitting a bid.

In support of its request for relief, Alpha also argues that the Commerce Business Daily (CBD) synopsis did not properly notify potential bidders of this solicitation because the job was listed under section "J," maintenance and repair of equipment, instead of section "S," housekeeping service. As a result of this listing, Alpha did not obtain notice of the procurement by reading the CBD.

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Furthermore, Alpha believes that its failure to receive notice of this solicitation was a violation of the Act of October 24, 1978, Pub. L. No. 95-507, title II, chapter 3, section 223(a), 92 Stat 1757 (Pub. L. No. 95-507), which states that a Federal agency letting a contract shall provide a copy of the bid sets with respect to that contract and other pertinent information to any small business which requests the information.

GSA indicates that although this total small business set-aside solicitation was sent to more than 190 firms, the protester, the incumbent contractor for part of the work covered by the solicitation, was not sent a copy of the solicitation. Its name apparently was left off the mailing list. The abstract of bids indicates that 12 firms submitted bids to perform in the service area formerly handled by Alpha, with at least five bidders for each of the four categories of required services.

Based on the following, the protest is denied.

Procuring agencies have broad discretion in deciding whether it is in the Government's best interest to cancel a solicitation after opening. However, we have held that omission of a bidder from the bidder's mailing list does not require resolicitation where the omission is not shown to be deliberate, a significant effort is made to obtain competition, and the award is made at a reasonable price. Witchita Beverage, Inc., d/b/a/ Pepsi-Cola and Seven-Up Bottling Company, B-191205, July 6, 1978, 78-2 CPD 11. This rule is applied even where the omitted bidder is the incumbent contractor or only one bid is received. Preventive Health Programs, Inc., B-195877, January 22, 1980, 80-1 CPD 63. We follow this rule because the propriety of a particular procurement is viewed from the Government's point of view, in terms of adequacy of competition and reasonableness of price, and not from the omitted bidder's point of view.

Upon review of this record, there is no evidence that Alpha's omission from the bidders' mailing list was deliberate. We note that a large number of potential bidders were sent the solicitation. The protester does not allege nor demonstrate that its omission from the list constituted a deliberate attempt to preclude the firm from participating in this procurement. Preventive Health Programs, Inc., supra; United Optical Company, B-194115, May 22, 1979, 79-1 CPD 368. In the absence of persuasive evidence of a conscious or deliberate intent to preclude the participation of a prospective

bidder, the failure to receive a copy of the solicitation must be viewed as resulting from inadvertence, which generally does not provide a basis to cancel an invitation. 49 Comp. Gen. 707, 709 (1970).

Here, 190 firms were solicited, 12 bids were received for the San Diego service area and, in GSA's view, adequate competition was obtained and the prices were reasonable. The protester does not suggest that there was inadequate competition or that GSA will award the contract at an unreasonable price. Under these circumstances, there is no basis for this Office to recommend that GSA not award the contract under the original solicitation. North Alabama Reporting Service, B-193979, April 11, 1979, 79-1 CPD 255; Intermountain Sanitation Service, B-193239, January 19, 1979, 79-1 CPD 33.

With respect to Alpha's allegation that GSA improperly classified the job under section "J" of the CBD, thus resulting in Alpha not finding it in the CBD when it looked, initially we point out that GSA advises us that the solicitation which resulted in the prior contract award to Alpha was listed under section "J" of the CBD. In any event, we have held that in the absence of a showing that an allegedly defective CBD notice was the result of a deliberate or conscious attempt to preclude a firm from bidding, we will not disturb the award. See Preventive Health Programs, Inc., supra; U.S. Air Tool Co., Inc., B-192401, October 30, 1979, 78-2 CPD 307; Coastal Services, Inc., B-182858, April 22, 1975, 75-1 CPD 250. As to GSA's omission of Alpha from the mailing list, the record does not show any deliberate or conscious effort to preclude Alpha from bidding.

As a final matter, the protester contends that GSA has not complied with section 223(a) of Pub. L. No. 95-507, which provides that:

"For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request--

- (1) a copy of bids sets * * *;
- (2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

- (3) * * * major Federal law or agency rule with which such business concern must comply in performing such contract."

Since the mandate of the statute can only become operative when a small business concern requests information and the agency refuses, and that is not the situation where there is an inadvertent failure to furnish the information, there is no merit in Alpha's allegation.

The protest is denied.

Milton J. Fowler

For the Comptroller General
of the United States